PUBLIC PROSECUTOR v. CHEW AH HOCK

[A. Cr. J. (Wilson J.) September 6, 1955]

[K. L. — Criminal Appeal No. 66 of 1955]

Prevention of Corruption Ordinance, 1950, s. 3(b) — Sentence — Inadequacy of sentence — Practice of addressing Court on question of sentence.

The accused held a Government contract to supply rice of a specified quality to the aborigines. On the 1st April, 1955 a Department of Aborigines' staff officer inspected the rice supplied and found it to be of inferior quality. He informed the accused that the matter would be reported. On the 9th April, 1955, the accused approached the staff officer and offered him an envelope saying that it was an Easter present of $200. The accused was charged and convicted of an offence under section 3(b) of the Prevention of Corruption Ordinance, No. 5 of 1950, and sentenced to a term of three months' imprisonment. The President in his judgment commented that "Apart from informing the Court that the accused had no previous convictions the prosecuting counsel had nothing to say with regard to sentence."

On appeal the sentence was increased to one of nine months' imprisonment. The mere fact that the prosecutor does not address the Court on the amount of the sentence is immaterial and the practice of asking for a specific sentence is not one which should be encouraged.

MAGISTRATE'S CRIMINAL APPEAL.

E. Brown (Federal Counsel) for the appellant.

Respondent in person.

Wilson J. : — This is an appeal by the Public Prosecutor against the sentence of three months' imprisonment imposed by the learned President in Kuala Lumpur Sessions Court Criminal Case No. 180 of 1955.

The respondent was sentenced to three months' imprisonment for an offence punishable under section 3(b) of the Prevention of Corruption Ordinance, 1950.

In my view, this was a bad case and the sentence was inadequate. The respondent had no previous conviction of any sort. If he had had a previous conviction for an offence of the same type, I do not doubt that he would have received a maximum sentence of imprisonment for this offence. The mere fact that the Public Prosecutor does not address the Court on a question of the amount of the sentence to be awarded is immaterial. For the prosecutor to do more than draw the attention of the Court to such facts as he considers material would, I consider, be improper. One is aware that on the Continent of Europe it is quite usual for a prosecutor to demand a specific sentence. Such a practice is not prevalent in England, and is certainly not allowed before Assize Courts and Quarter Sessions Courts. I do not think that such a practice should be encouraged here.

I accordingly varied the sentence to one of nine months' imprisonment.

Order accordingly.

CHOP KIM LEE SENG KEE v. YEO KIAT JIN

[C. A. (Whyatt C.J., Mathew C.J. (F.M.) and Taylor J.) November 18, 1955]

[Singapore — Civil Appeal No. 13 of 1955]

Defamation — Slander — Qualified privilege — Excessive publication — Malice.

The defendant in this case carried on business in Indonesia as a rubber exporter and he had employed the plaintiff for many years as his commission agent to sell on a 2% commission basis the rubber which he shipped from Indonesia to the Colony. On March 28, 1953 he shipped a consignment of 10 tons to the plaintiff from Rengat, a port in Indonesia by the S.S. Pulau Kidjang and he himself travelled as a passenger on the same ship. When the vessel called at Sapuah, the last port of call in Indonesia on March 29, 1953, the defendant went ashore and there heard from a business man of his acquaintance that the plaintiff had failed in business. When he returned on board, he said to the chief clerk and the tally clerk that he had heard that the plaintiff had failed. This was said in the presence of two sailors, members of the ship's crew. The plaintiff claimed damages for slander. The learned trial Judge dismissed the suit on the grounds that the occasion on which the slander was uttered was one of qualified privilege, and that there was no evidence of malice to defeat the privilege pleaded. The plaintiff appealed.

Held (by Mathew C.J. (F.M.) and Taylor J.): (1) no common interest had been established between the defendant-respondent and the two ship's clerks which made the occasion one of qualified privilege; (2) in any case even if publication to the clerks were defensible, publication to the sailors also was real and exceeded the privilege; (3) the learned Judge was wrong in holding that malice ought not to be inferred in the circumstances, as in fact the defendant's behaviour indicated strongly that he was actuated by malice..

Held (by Whyatt C.J.): the communication to the chief clerk and the tally clerk in this case was privileged but the communication to the sailors constituted excessive publication and was not protected by the law of privilege; (2) as the plaintiff himself has said in evidence that the defendant was not actuated by any improper motive, he had failed to prove that there was malice on the part of the defendant.

Cases referred to:—

(1) *Watt v. Longsdon* (1930) 1 K.B. 130.

(2) *Toogood v. Spyring* 1 C.M. & R. 181 at p. 193.

(3) *Smith v. Streatfield* (1913) 3 K.B. 764.

CIVIL APPEAL.

N. L. Macassey for the appellant.

T. W. Ong for the respondent.

Whyatt C.J. : — The questions for decision in this appeal are whether certain words imputing insolvency to the plaintiff which were spoken by the defendant on board the S.S. Pulau Kidjang on the 29th March 1953 were uttered on a privileged occasion and if they were, whether this privilege was lost by reason of excessive publication, or because of malice on the part of the defendant.